

**IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION**

REALLY BIG COLORING BOOKS, INC.,)
)
Plaintiff,)
)
v.)
)
DELTA DENTAL INSURANCE COMPANY) **JURY TRIAL DEMANDED**
and DELTA DENTAL OF CALIFORNIA,)
)
Defendants.)

COMPLAINT

REALLY BIG COLORING BOOKS, INC. (“RBCB”), by and through undersigned counsel, for its Complaint against Defendants, DELTA DENTAL INSURANCE COMPANY and DELTA DENTAL OF CALIFORNIA (“DELTA”), states as follows:

PARTIES

1. RBCB is an American publisher located at 224 N Meramec Ave, St. Louis, MO 63105.
2. Defendant DELTA DENTAL INSURANCE COMPANY is the nation’s leading provider of dental insurance, with its principal place of business at 100 1st St #2100, 100 First Plaza, San Francisco, CA 94105.
3. Defendant DELTA DENTAL OF CALIFORNIA, whose legal parent is DELTA DENTAL INSURANCE COMPANY, has its principal place of business at 100 1st St, Fl. 4, San Francisco, CA 94105. Defendant DELTA DENTAL OF CALIFORNIA also has a place of business at 17871 Park Plaza Dr. Cerritos, CA 90703.

NATURE OF ACTION, JURISDICTION, AND VENUE

4. This is a civil action for copyright infringement pursuant to 17 U.S.C. § 101 *et seq.* and 501 *et seq.*

5. This case is about the willful, unauthorized use of RBCB's copyrighted coloring books in Defendants' nationwide dental insurance practices.

6. RBCB seeks preliminary and permanent injunctive relief and appropriate damages from the Court.

7. This Action is proper under the Copyright Act of 1976, as amended, 17 U.S.C. §§ 101 *et seq.* (the "Copyright Act").

8. The Court has original subject matter jurisdiction over RBCB's Copyright claims pursuant to 17 U.S.C. §§ 101 *et seq.* and 28 U.S.C. §§ 1331 and 1338.

9. This Court has personal jurisdiction over DELTA under Missouri's long-arm statute, which provides for personal jurisdiction over parties who transact business and make contracts within Missouri. Mo.Rev.Stat. § 506.500(1)-(2).

10. Upon information and belief, each of the Defendants has transacted business and made contacts in this state.

11. Further, by infringing RBCB's copyrights DELTA has caused injury in this state.

12. Venue is proper in this Court pursuant to 28 U.S.C. § 1400(a) as the Defendants are subject to personal jurisdiction in this District.

13. Venue is also proper in this District under 28 U.S.C. § 1391(b)(2) as a substantial part of the events that gave rise to this Complaint occurred in this District.

14. RBCB created the coloring books at issue in this District.

FACTUAL ALLEGATIONS

Background

15. RBCB produces and sells “the nation’s most popular coloring books.”
16. RBCB entered into an agreement with DELTA to design, manufacture, and deliver a series of dental-themed coloring books.
17. DELTA placed all coloring book orders to RBCB from its headquarters in San Francisco, CA.
18. A DELTA representative requested and approved each invoice prior to shipping. The representative also provided a distribution list with each of the shipping destinations.
19. During the course of the relationship RBCB sent coloring books to Florida, Georgia, Texas, and California.
20. An invoice is included in **Exhibit A**.

RBCB’s Original Artwork

21. Prior to entering into an agreement with RBCB, DELTA did not have a coloring book.
22. The central character in each coloring book is a mouse named Ratoncito Pérez.
23. Ratoncito Pérez is a figure popular in Spanish and Hispanic American cultures similar to the tooth fairy.
24. DELTA used a version of Ratoncito Pérez in its marketing materials prior to entering into the agreement with RBCB.
25. DELTA was not satisfied with its version of Ratoncito Pérez (“DELTA’s Ratoncito Pérez”) because it appeared unfriendly.

26. Therefore, DELTA requested that RBCB redesign Ratoncito Pérez to appeal to its young audience.

27. RBCB created a new version of Ratoncito Pérez in its coloring books (“RBCB’s Ratoncito Pérez”).

28. RBCB added new visual aspects to DELTAs’ Ratoncito Pérez by illustrating several short stories about the benefits of dental hygiene featuring Ratoncito Pérez.

29. DELTA supplied the text of the coloring books.

30. RBCB edited this text for syntax, grammar, punctuation, and style. RBCB thereby added protectable revisions to the text.

31. Apart from providing the text and offering input on design, DELTA played no role in creating the coloring books.

32. In addition to featuring a new version of Ratoncito Pérez, the coloring books featured many children.

33. For example, Zachary is featured in volumes one and two. Other characters featured throughout include Diego, Sofia, Laura, Carlos, Chloe, Adam, Jenny, Neil, and Paulina.

34. Further, RBCB created all of the games, activities, word searches, puzzles, mazes, and word games in the coloring books.

35. RBCB provided a set of sketches to DELTA.

36. The first set of sketches RBCB provided to DELTA bear substantial similarity to the final depiction of Ratoncito Pérez found in the published coloring books.

37. The first set of sketches RBCB provided to DELTA is attached as **Exhibit B**.

38. RBCB’s coloring books are original and expressive, and have been reduced to a tangible medium.

39. Although DELTA provided the text in the coloring books, RBCB edited that text and supplied the characters, games and activities. RBCB created the entire visual perception, the dominant feature of the coloring books.

RBCB's Copyright Registrations

40. RBCB has secured Registration No. TX 7-856-128 for "Las Aventuras del Ratoncito Perez en Miami," (herein the "'128 Registration").

41. The '128 Registration has an effective registration date of March 10, 2014.

42. The '128 Registration certificate is attached hereto as **Exhibit C**.

43. The '128 Registration is a valid registration.

44. RBCB has secured Registration No. TX 7-856-098 for "Las Aventuras del Ratoncito Perez en Atlanta" (herein the "'098 Registration").

45. The '098 Registration has an effective registration date of March 10, 2014.

46. The '098 Registration certificate is attached hereto as **Exhibit D**.

47. The '098 Registration is a valid registration.

48. RBCB has secured Registration No. TX 7-856-106 for "Las Aventuras del Ratoncito Perez en Houston" (herein the "'106").

49. The '106 Registration has an effective registration date of March 10, 2014.

50. The '106 Registration certificate is attached hereto as **Exhibit E**.

51. The '106 Registration is a valid registration.

52. RBCB has secured Registration No. TX 7-856-138 for "Ratoncito Perez Saves the Day ... One Tooth at a Time!" (herein the "'138 Registration").

53. The '138 Registration has an effective registration date of March 10, 2014.

54. The '138 Registration certificate is attached hereto as **Exhibit F**.

55. The '138 Registration is a valid registration.

56. RBCB has secured Registration No. TX 7-856-102 for "The Adventures of Ratoncito Perez" (herein the "'102 Registration").

57. The '102 Registration has an effective registration date of March 10, 2014.

58. The '102 Registration certificate is attached hereto as **Exhibit G**.

59. The '102 Registration is a valid registration.

Delta Knew RBCB Owned The Rights to Its Coloring Books

60. RBCB's house rules regarding copyright protection are to never send intellectual property ("IP") without a water mark unless prior authorization has been obtained from RBCB's IP department. **Exhibit H** is a page from a draft coloring book with a water mark.

61. Every time RBCB sent a draft coloring book to DELTA, it supplied a watermarked proof.

62. Additionally, every coloring book, whether a draft or a final product, contained RBCB's company information.

63. The first coloring book was published in January, 2012.

64. Each coloring book contained RBCB's copyright notice.

65. In an email dated January 26, 2012, Solomon Romano asked whether it is possible "to minimize all the Really Big Coloring Book company information on the book, and make it more like a book from Delta Dental?" Email is attached as **Exhibit I**.

66. On April 18, 2012, DELTAs' Hispanic Initiative Program manager, Solomon Romano, sent an email to RBCB asking if DELTA could purchase the rights to a coloring book, citing the printing costs under the current purchase agreement. RBCB replied that same day,

explaining that “Printing and Publishing are two very different issues.” Email is attached as

Exhibit J.

67. The January 26 and April 18, 2012 emails show that DELTA recognized the value in owning the copyrights to the coloring books and knew that it did not own the copyrights.

Deltas’ Widespread Copying

68. Orders from DELTA began slowing down in late 2015. DELTA purchased its last order of coloring books from RBCB on December 20, 2017.

69. DELTA, in fact, did not remove the copyright notice on its illegal copies. *See*

Exhibit K.

70. A Google search of “ratoncito perez save the day one tooth at a time” reveals that DELTA has illegally published RBCB’s coloring book on the internet.

71. DELTA has published a video on YouTube titled “Adventures of Ratoncito Pérez. In the video, Ratoncito Pérez is seen holding RBCB’s coloring book. Therefore, the Ratoncito Pérez character in the YouTube video is the same Ratoncito Pérez in RBCB’s coloring book.

Exhibit L is a screenshot from the YouTube video showing Ratoncito Pérez holding an RCBC coloring book.

72. Further, RBCB delivered multiple coloring book shipments to America’s Tooth Fairy in North Carolina, part of the National Children’s Oral Health Foundation (NCOHF). NCOHF provides a link to the YouTube video titled “Adventures of Ratoncito Pérez. http://www.ncohf.org/resources/training_videos/.

73. Therefore, DELTAs’ widespread copying and use of RBCB’s copyrighted coloring books constitutes willful infringement.

COUNT I
COPYRIGHT INFRINGEMENT
17 U.S.C. §§ 501-505

74. RBCB incorporates by reference and restates each of the allegations in the preceding paragraphs of this Complaint as though fully set forth herein.

75. RBCB owns valid and enforceable copyrights in the Copyrighted Works.

76. DELTA infringed RBCB's copyrights by distributing copies of the Copyrighted Works, in whole or in part, without authorization from RBCB, in violation of 17 U.S.C.A. § 106.

77. Defendants infringed RBCB's copyrights by creating derivative works from the Copyrighted Works without authorization from RBCB, in violation of 17 U.S.C. § 106.

78. DELTA knew or should have known that their conduct infringed RBCB's copyrights and are thereby liable for willful infringement.

79. DELTA obtained a direct financial benefit from the foregoing infringing activities by reducing the demand for the hard copy of RBCB's coloring book and not paying any licensing fees for the use of RBCB's coloring book as a downloadable book.

80. RBCB is entitled to damages for DELTAs' infringement in an amount to be proven at trial, including both the actual damages suffered by RBCB and DELTAs' profits attributable to the infringement. *See* 17 U.S.C. § 504.

81. Alternatively, upon election before final judgment is entered, RBCB is entitled to recover statutory damages. *Id.*

82. Defendants' past and continuing infringement of RBCB's copyrights has caused and will continue to cause irreparable injury to RBCB. Unless restrained and enjoined, DELTA will continue to commit such acts of infringement. Monetary damages are not adequate to compensate RBCB for such inflicted and threatened injuries, entitling him to additional

remedies, including temporary and permanent injunctive relief, pursuant to 17 U.S.C. § 502, and an order impounding and destroying any and all infringing materials, pursuant to 17 U.S.C. § 503.

WHEREFORE, Plaintiff asks this Court to enter preliminary and final orders and judgements as necessary to provide Plaintiff the following requested relief:

- a) Finding DELTA liable for copyright infringement by virtue of DELTAs' unauthorized use of RBCB's copyrighted works;
- b) Finding DELTAs' copyright infringement to be voluntary and an intentional violation of DELTAs' known duties, and therefore willful;
- c) An award of damages against DELTA under 17 U.S.C. § 504;
- d) An award under 17 U.S.C. § 505 allowing recovery of the full costs of this action including plaintiff's reasonable attorney's fees; and
- e) For such and other relief as the Court deems just and proper under the circumstances.

JURY TRIAL DEMANDED

Plaintiff demands a jury on all claims alleged herein.

Date: April 18, 2018

Respectfully submitted,

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